

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MARYLAND

LE'BON B. WALKER,
Petitioner

*

*

v.

Civil Action No.: PJM-06-937

*

Frank C. Sizer, Jr, et al.,
Respondent

*

* * * * *

**MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO RE-
DATE THE MARCH 2007, DENIAL OF THE MOTION TO ALTER OR AMEND
JUDGMENT TO REFLECT A DECISION DATE OF JUNE 14, 2007.**

Comes Now the Petitioner, Le'Bon B. Walker, by and through his attorney Fred Warren Bennett, Esq., Bennett & Bair, LLP, and moves this Honorable Court to reconsider its June 25, 2007 Order denying Petitioner's Motion to Re-date Order and Memorandum Opinion (paper No. 27), and for reasons therefore states as follows:

1. On June 14, 2007, Petitioner filed a Motion to Re-date the March 14, 2007, denial of the Motion to Alter or Amend Judgment to reflect a date of June 14, 2007, in order to allow Petitioner to file a Notice of Appeal.

2. The heart of this Court's ruling in its June 25, 2007 Order is the following language:

"He [counsel for Petitioner] did receive the March 14, 2007 decision via e-mail. That he may have failed to master the intricacies of the system, which provides nearly instantaneous e-mail notification of all matters in this and other civil cases in which he has entered an appearance, does not merit the relief he now requests."

3. As was indicated in his original Motion to Re-date Order and Memorandum Opinion (paper No. 27), undersigned counsel did **not**, I repeat **not**, ever receive an e-mail containing the Order dated March 14, 2007, denying Petitioner's Motion to Alter or Amend Judgment. It is a standard practice of the law firm of Bennett & Bair, LLP, not to erase e-mail traffic being received by the law firm that is not older than four (4) months. Attached hereto as Exhibit A are the documents reflecting the entire e-mail traffic for the month of March, 2007. As it is indicated, notably absent from Exhibit A is any e-mail document on or around March 14, pertaining to the Walker v. Sizer case.¹

4. This case has nothing to do with the failure of undersigned counsel to master the intricacies of the "CM/ECF" system. In fact, all e-mails coming into the office of Bennett and Bair, LLP, are printed out by the Secretary/Office Manager, Ms. Christina Emade and the written e-mail documents are then distributed to the attorney to whom the e-mail is addressed. All e-mails are stored in Ms. Emade's computer, and Ms. Emade printed out on June 26, 2007 all of the documents contained in Exhibit A for undersigned counsel. See Exhibit B, Declaration of Ms. Christina Emade.

¹ As indicated, undersigned counsel asserted in his original Motion to Re-date Order and Memorandum Opinion that he had **not** received, at any time, an e-mail in connection with the Court's Order dated March 14, 2007. Other than the alleged presumption of regularity of transmission of an e-mail, this Court's statement in its June 25, 2007 Order that " he [counsel] did receive the March 14, 2007 decision via e-mail" is unsupported by any evidence whatsoever. It is distressing to say the least that this Honorable Court would not accept as true the factual allegations of undersigned counsel, a forty (40) year member of the Bar, that he had **not** received the e-mail in question

In this case, Petitioner should not be deprived of his right of appeal to the Fourth Circuit by missing a filing deadline on a Notice of Appeal when undersigned counsel never received a document disposing of the Motion to Alter or Amend Judgment. Petitioner had a due process right to proper notice of the denial of the Motion to Alter or Amend Judgment and the lack of notice should entitle Petitioner to a re-dated Order. Application of Gault, 387 U.S. 1, 33-34 (1967)

6. Undersigned counsel respectfully requests that this Honorable reconsider its June 25, 2007 Order and enter a new Order to Reflect a decision date of June 27, 2007 (the date on which this Motion for Reconsideration is being filed).

Respectfully submitted

_____/s/_____
Fred Warren Bennett
BENNETT & BAIR, LLP
6301 Ivy Lane, Suite 418
Greenbelt, MD 20770
Tel: 301-220-1570
Fax: 301-220-1577

CERTIFICATE OF SERVICE

This is to certify that on this 28 day of June, 2007 a copy the foregoing Motion for Reconsideration of Order Denying Motion to Re-date the March 2007, Denial of the Motion Alter or Amend Judgment to Reflect a Decision Date of June 14, 2007 was mailed, postage prepaid, by first class mail, to Mary Ann Ince, Esq., Assistant Attorney General, Office of the Attorney, Criminal Appeals Division, 200 Saint Paul Place, Baltimore, Maryland 21202.

_____/s/_____
Fred Warren Bennett

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MARYLAND

LE'BON B. WALKER,
Petitioner

*

*

v.

Civil Action No.: PJM-06-937

*

Frank C. Sizer, Jr, et al.,
Respondent

*

* * * * *

NOTICE OF LENGTHY EXHIBITS BEING FILED IN PAPER FORMAT

In light of the length of Exhibits A and B being filed as attachments to the Motion for Reconsideration of Order Denying Motion to Re-date the March 2007, Denial of the Motion to Alter or Amend Judgment to Reflect a Decision Date of June 14, 2007, undersigned counsel is filing these Exhibits in paper format.

_____/s/_____
Fred Warren Bennett
BENNETT & BAIR, LLP
6301 Ivy Lane, Suite 418
Tel: 301-220-1570
Fax: 301-220-1577

